

G. “900 MHz channel” means a **trunked** or conventional **channel** or frequency pair in the 900 MHz **band within a 25 mile radius** of the geographic center of any **city identified** in section II paragraphs B and C, capable of being **used in providing trunked SMR service in accordance with the Federal Communications Act..** Center **coordinates** are defined **in 47 C.F.R. §90.635** and in Federal Communications Commission **Public Notice 43004, Private Radio 800 MHz Systems Application Waiting List**, released May **27, 1994**. For the **purposes** of this Final Judgment, the location of channels shall be determined as of September 1, 1994.

H. “Management agreement” means the **SMR Systems Facilities Services Agreement, SMR User Acceptance Agreement** and any and **all** such agreements relating to Motorola’s **and/or Nextel’s** management of an **SMR** license for any licensee.

I. “Motorola” **means Motorola, Inc., each affiliate,** subsidiary or **division** thereof, and each **officer,** director, employee, agent or other person acting for or on behalf of any of them.

J. “Nextel” means **Nextel Communications, Inc., each affiliate,** subsidiary or division thereof, and **each officer,** director, **employee,** agent or other person **acting** for or on **behalf** of any of them. Nextel shall include **OneComm Corporation as provided** for in the Agreement and Plan of Merger **dated July 13, 1994** and **Dial Page, Inc. as provided for in the letter of intent dated August 5, 1994.**

K. “Person” means any natural person, corporation, association, ~~firm~~, partnership or other legal entity.

L. “SMR infrastructure equipment” means equipment (e.g., ~~switches~~, transmission equipment, ~~and radio base stations~~) used by ~~an SMR service provider~~ in ~~or for the~~ provision of SMR ~~service~~ anywhere ~~in~~ North America and ~~includes related software~~, maintenance and support services and other equipment, products or ~~services~~ used to provide SMR service.

M. “Specialized Mobile Radio System” or “SMR” *means* a radio system in which licensees provide land mobile communications services (other than radio-location ~~services~~) in the 800 MHz and 900 MHz bands on a commercial basis as defined and regulated in 47 C.F.R. Part 90.

III.

APPLICABILITY

A. The provisions of this Final Judgment shall apply ~~to~~ defendants, ~~to~~ each of their successors and assigns, to their subsidiaries, ~~affiliates~~, directors, ~~officers~~, managers, agents, and employees, and to all persons in active concert or participation with any of them who shall have received actual notice of this Final Judgment by personal ~~service~~ or otherwise.

B. Nothing herein contained ~~shall~~ suggest that any ~~portion of this Final~~ Judgment is or has been created for the benefit of any third party and nothing herein shall ~~be construed to provide any rights to any third party~~.

IV.

PROHIBITED CONDUCT

Defendants **are** enjoined and restrained as follows:

A. Defendants as a group may not hold or **acquire** licenses for more than **thirty (30) 900 MHz** channels **in** any Category A City or **more than** ten **(10) 900 MHz** channels in any Category B City without the prior written **permission** of **plaintiff**. To the extent that defendants are **currently** the licensees for more than thirty **(30) 900 MHz** channels in any Category A City or more than ten **(10) 900 MHz** channels in any Category B City, defendants shall divest fully and completely **all** licensed channels in excess of the relevant **number** and sell **all SMR infrastructure** equipment **attributable** to the divested channels to a person or persons approved by the **plaintiff**, **provided**, however, that the provisions of this Final Judgment shall have no effect **with** respect **to** frequencies licensed under the authority of a foreign government.

B. Defendants shall not finance any portion of the purchase of any license pursuant to a sale mandated by section **IV.** paragraph A of **this Final** Judgment without plaintiffs prior written permission.

c. Except as permitted by paragraph E, defendants shall terminate management agreements relating to **all 900 MHz** channels in Category A and Category B **Cities** at the **written** request of the licensee. Further, -defendants are prohibited **from exercising**, maintaining, enforcing or claiming any right of **first refusal** to purchase the system, license or operation relating to such channels, and

are prohibited from exercising, maintaining, enforcing or **claiming** any right to select the **SMR infrastructure** equipment to be deployed on the systems.

D. Except as permitted by **paragraph E**, defendants are **further enjoined** and **restrained from** taking any action to prevent or inhibit a licensee's termination of its management agreement **and/or affiliating** with a network controlled by a third-party pursuant. to **section IV. paragraph C**, above. Defendants may, however, require a licensee to provide **120** days notice of an intent to exercise its rights under **section IV. paragraph C**, and may solicit customers of a terminating system to purchase defendants' services. Nothing in **this** paragraph **shall** impose any express or implied duty on the part of defendants to conduct business with any person.

E. Notwithstanding **the** provisions of **section IV. paragraphs C and D**, above, defendants may **(1)** refuse to terminate a management agreement, **(2)** exercise, maintain, enforce or claim a right of first refusal to purchase, or **(3)** exercise, maintain, enforce or claim a right to select the **SMR infrastructure** equipment used by a 900 MHz channel in a **Category A** City when, including that channel, the defendants as a group control by license and by management agreement, combined, thirty **(30)** or **fewer 900 MHz channels** in that city. Further, defendants may **(1) refuse to terminate** a management agreement, **(2) exercise, maintain, enforce or claim** a right of first refusal to purchase, or **(3) exercise, maintain, enforce or claim** a right to select the **SMR infrastructure** equipment used by a 900 MHz channel in a **Category B** City when, including that

channel, the **defendants** as a group control by license and by **management** agreement, combined, ten (10) or **fewer 900 MHz channels in that** city.

F. Defendants shall **fully** and completely divest **forty-two (42) 800 MHz channels** in the Category C City to a person or persons approved **by the plaintiff**. Defendants **shall** have the **full** discretion to **designate the** frequencies **to be** divested. The divestitures required by this paragraph shall **be** contingent upon **closing** of the **transaction** contemplated by the letter of intent between **Nextel** and Dial Page, Inc., dated August 5, 1994. Further, any transaction **to** accomplish **such** divestitures may be made contingent upon closing of the transaction contemplated by the letter of intent between **Nextel** and Dial Page, Inc., dated August 5, 1994.

G. Defendants are enjoined and restrained **from** entering into new management agreements for 900 **MHz** channels in any Category A or **Category B** Cities, except as to channels **owned** or managed by defendants as of August 4, 1994, without the prior written **permission** of plaintiff. Defendants are **further** enjoined and restrained **from** holding or acquiring, either directly or indirectly, **more** than a five percent ownership interest **in** any corporation or entity that **itself** owns, controls, or **manages**, either directly *or indirectly*, 900 **MHz** channels in any **Category A or B Cities** without the prior written permission of the **plaintiff unless** the corporation's or entity's **ownership, control or management** of 900 MHz channels in combination with that of defendants **is less than or** equal to thirty **(30)**

900 **MHz** channels if a Category A city and ten (10) **900 MHz** channels if a Category **B** city.

H. **For** purposes of complying with the **provisions** of section **IV**. **paragraphs A** through **F**, defendants shall share **information** and enter agreements **to** the extent **reasonably necessary to effect the** allocation between them with respect **to** 900 **MHz** channels they **will** continue to license under the relevant number limit.

I. Defendants shall take all reasonable steps to complete the required divestitures no later than 180 days **after** entry of this Final Judgment. Defendants shall **provide** plaintiff notice when the divestitures have been completed in accordance **with** the terms of this Final Judgment with respect to each city. In its sole discretion, plaintiff may extend the date by **which** defendants are required **to** divest rights in 900 MHz frequencies; **provided** however, that plaintiff shall extend the divestiture period **to** accommodate proceedings by the Federal Communications Commission with respect to the transfer of any divested license.

J. **Until** the divestitures required by this Final Judgment have been **accomplished**, defendants **shall refrain from taking** any action **that** would jeopardize the economic viability of properties to be divested.

V.

AGENT

A. If defendants have not completed the required divestitures **within 180** days of entry of this **Final** Judgment, the Court **shall**, upon application of the **plaintiff**, appoint an agent **to** effect the mandated sales. **After** the agent's appointment becomes effective, defendants immediately shall **identify specific** frequencies **to** be divested. **Thereafter**, only the agent, and not the defendants, **shall** have the right to sell excess licensed channels. The agent shall have the power and authority **to** effectuate the mandated sales at such price and on such terms as are then obtainable by the agent, to a purchaser acceptable **to** the **plaintiff**, subject to the provisions of this Final Judgment. The agent shall have such other powers as the Court deems appropriate. Defendants shall use **all** reasonable efforts to assist the agent in accomplishing the required sales. Defendants **shall** not object to a sale by the agent on any grounds other than malfeasance. Any such objection by defendants shall be conveyed to **plaintiff and to** the agent **within fifteen (15) days after** the agent has notified defendants of a proposed **sale**.

. . B. The agent *shall* be a business broker with experience and expertise in the *disposition* of telecommunications **properties**. **Plaintiff** shall provide defendants with the names of not more than two nominees for the position of agent for the required divestiture. Defendants will notify **plaintiff within five days** thereafter whether either or both such nominees are acceptable. If either or both

of such nominees are acceptable to defendants, plaintiff shall notify the Court of the person or persons upon whom the parties have agreed and the Court shall appoint one of the nominees as agent. If neither of such nominees is acceptable to defendants, defendants shall furnish to plaintiff within five days after plaintiff provides the **names** of its nominees, written notice of the names and qualifications of not more than two nominees for the position of agent for the required divestiture. Plaintiff shall furnish the Court the names and qualifications of its proposed nominees and the names and qualifications of the nominees proposed by defendants. The Court may hear the parties as to the qualifications of the nominees and shall appoint one of the nominees as agent.

c. The agent shall serve at the cost and expense of defendants, on such terms and conditions as the Court may prescribe, and shall account for all monies derived from the sale of channels and all costs and expenses so incurred.

D. The agent shall have full and complete access to the personnel, books, records, and facilities of the defendants relevant to excess licensed channels and the defendants shall develop such financial or other information relevant to the channels to be sold as the agent may request. Defendants shall take no action to interfere with or impede the agent's accomplishment of the sale and shall use their best efforts to assist the agent in accomplishing the required sale.

E. After his or her appointment, the agent shall file monthly reports with the parties and the Court setting forth the agents' efforts to accomplish divestitures contemplated under this Final Judgment. If the agent has not

accomplished such divestitures within six months **after** the agent's appointment, the agent shall thereupon promptly file with the Court a report setting forth **(1)** the agent's efforts **to** accomplish the required divestitures, **(2)** the reasons, in the agent's judgment, why the required **divestitures** have not been accomplished, and **(3)** the agent's recommendations. The agent at the **same** time **shall furnish** such **report to** the parties, who shall each have the right to be heard and to make additional recommendations. The **Court thereafter shall** enter such orders **as** it shall deem appropriate to **carry** out the purpose of the agency, **which** shall include, if necessary, extending the **term** of the agency and the term of the agent's appointment.

VI.

SANCTIONS

Nothing in this Final Judgment shall bar the United States **from** seeking, or the Court **from** imposing, against defendants or any person any relief available under any applicable provision of law.

VII.

PLAINTIFF ACCESS

A. To determine or secure compliance with this Final Judgment and for DO other purpose, duly authorized representatives of the **plaintiff shall**, upon written request of the Assistant Attorney General in charge of the Antitrust Division, and on reasonable notice to defendants, be permitted:

1. **access** during defendants' office **hours to** inspect and copy **all** records and documents in **their possession or control relating to any matters** contained in this Final Judgment; and

2. **to interview defendants' officers, employees, trustees, or agents, who may have counsel present, regarding such matters. The interviews shall be subject to defendants' reasonable convenience and without restraint or interference from defendants.**

B. Upon **written** request of the Assistant Attorney General in charge of the Antitrust Division, defendants **shall** submit such **written** reports, under oath if requested, relating **to** any of the matters contained in this Final Judgment as may be reasonably requested.

C. No **information** or documents obtained **by** the **means** provided in this section **VII** shall be divulged by plaintiff to any person other than a duly authorized representative of the executive branch of the United States or a duly authorized representative of the Federal Communications Commission, except in **the** course of legal proceedings to which the United States **is a party**, or for the **purpose** of **securing** compliance **with** this Final Judgment, or as otherwise required by law.

VIII.

FURTHER ELEMENTS OF DECREE

A. **Defendants shall provide each licensee subject to a management agreement with a copy of this Final Judgment and notice of their rights under this**

Final Judgment in a form approved by **plaintiff** within seven days of the date this **Final** Judgment is entered.

B. This Final Judgment resolves issues with respect to: **(1)** defendants' consummated and proposed acquisitions of 800 MHz channels in the continental United States and Canada; **(2)** proposed mergers and acquisitions between **Nextel, OneComm** Corporation and Dial Page, Inc.; and **(3)** agreements between and among the defendants as of August **4, 1994** with respect to the **financing** and construction of **SMR** systems. Nothing in this Final Judgment, expressly or by implication, is intended to **affect** defendants' **activities** except as specifically required herein.

C. This Final Judgment shall expire ten years **from** the date of entry.

D. Jurisdiction is retained. by **this** Court for the purpose of enabling any of the parties to this Final Judgment to apply to this Court at any time for further orders and directions as may be necessary or appropriate to **carry** out or construe this Final Judgment, **to modify** or terminate any of its provisions, **to** enforce compliance, and to punish violations of its provisions.

E. Five years **after** the entry of this Final Judgment, any party **to** this Final Judgment may seek modification of its substantive **terms** and obligations, and neither the absence of **specific** reference to a particular event in the Final Judgment, nor the foreseeability of such an event at the time this Final Judgment was entered, **shall** preclude this Court's consideration of any modification request.

The common law applicable to modification of final judgments is not otherwise altered.

F. Entry of this Final Judgment is in the public interest.

DATED:

UNITED STATES DISTRICT JUDGE

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

UNITED STATES OF AMERICA,
Plaintiff,

v.

MOTOROLA, INC. and
NEXTEL COMMUNICATIONS, INC.)
Defendants.)

Civil Action No.

94 2331

STIPULATION

IT IS HEREBY STIPULATED AND AGREED, by and between the undersigned parties, by their respective attorneys, that:

1. The parties consent that a Final Judgment in the form hereto attached may be filed and entered by the Court, upon the motion of any party or upon the Court's **own** motion, at any time after compliance with the requirements of the Antitrust Procedures and Penalties Act (**15 U.S.C. § 16**), and without **further** notice to any **party** or other proceedings, provided that plaintiff has not withdrawn its consent, which it may do at any time before the entry of the proposed Final Judgment by serving notice thereof on defendants and by **filing** that notice **with** the Court.

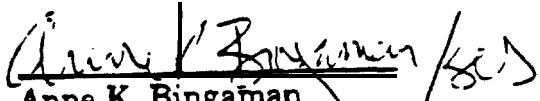
2. The parties **shall** abide by and comply with the **provisions** of the **Final** Judgment pending entry of the Final Judgment.

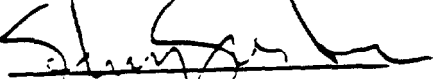
3. In the event plaintiff withdraws its consent or if the proposed Final Judgment is not entered pursuant to this Stipulation, this Stipulation will be of no

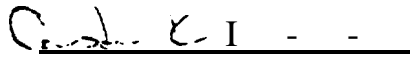
effect whatever, and **the** making of this Stipulation **shall** be without prejudice to any party in **this** or **any** other proceeding.

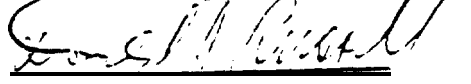
Dated: October 27, 1994

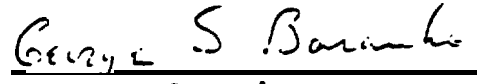
FOR THE PLAINTIFF:


Anne K. Bingaman
Assistant Attorney General


Steven C. Sunshine
Deputy Assistant Attorney General


Constance K. Robinson
Director of Operations


Donald J. Russell
Chief, Telecommunications Task Force

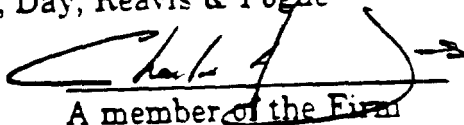

George S. Baranko

Katherine E. Brown
J. Philip Saunty, Jr.
Susanna M. Zwerling
Attorneys
Antitrust Division
U.S. Department of Justice
Washington, D.C. 20002
(202) 514-5640

FOR DEFENDANT NEXTEL COMMUNICATIONS, INC.:

Jones, Day, Reavis & Pogue

BY:

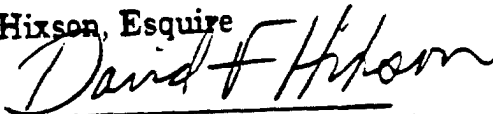

A member of the Firm

1450 G Street, N.W.
Washington, D.C. 20005
202-879-3675

FOR MOTOROLA, INC.:

David F. Hixson, Esquire

BY:


Vice Resident and General Attorney

1303 East Algonquin Road
Schaumburg, Illinois 60196
708-576-3960

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

UNITED STATES OF AMERICA,)
655 4th Street, N.W., Room 8104)
Washington, D.C. 20001)
Plaintiff,)
)
v.)
)
MOTOROLA, INC.)
1303 East Algonquin Road)
Schaumburg, Illinois 60196 and)
)
NEXTEL COMMUNICATIONS, INC.)
201 Route 17 North)
Rutherford, New Jersey 07070)
Defendants.)

CASE NUMBER **1:94CV02331**

JUDGE: Thomas F. Hogan

DECK **TYPE:** Antitrust

DATE **STAMP:** 10/27/94

COMPLAINT FOR **JUDGMENT** AND INJUNCTIVE RELIEF (ANTITRUST)

The United States of America acting under the direction of the Attorney General, brings this civil action to obtain equitable and other relief against **Nextel** Communications, Inc. ("**Nextel**") and Motorola, Inc. ("Motorola") and complains and alleges as follows:

1. **Nextel** and Motorola are the nation's leading providers, and each **other's** principal competitors, of specialized mobile radio ("SMR") **service**, a form of radio dispatch **service** which enables a customer **to** communicate between and among a fleet of vehicles, **such as** delivery **trucks**, repair **trucks** and messenger **services**.

2. **Nextel** and Motorola have agreed **to** transfer control of **substantial** portions of Motorola's **SMR service business to Nextel**, both through **Nextel's** purchase of **a substantial** portion of Motorola's SMR **frequencies and its** **assumption** of management control of most of Motorola's remaining **SMR**

frequencies. As a result, **Nextel will control virtually all of the frequencies currently** used for **SMR** service in **fifteen** (15) of the **largest cities in** the United States. The agreement also contemplates **transfer** of twenty-four percent **(24%)** Of **Nextel's voting** securities to Motorola and requires **Nextel** to purchase **SMR radio** equipment **from Motorola**.

3. Unless the execution of the agreement between **Nextel** and **Motorola** is **blocked**, competition in the **SMR service** business **will** be reduced substantially in **fifteen** (15) major cities in the United States. **As** a result, **consumers will** face increased prices for **SMR** service and decreased quality and availability of service. The agreement may also inhibit the **deployment** of alternative technologies.

I.

JURISDICTION AND VENUE

4. **This** complaint is filed under Section 15 of the Clayton Act, as amended, 15 U.S.C. § 25, to prevent and restrain the violation by the defendants of Section 7 of the Clayton Act, as amended, 15 U.S.C. § 18. This Court has jurisdiction of the subject matter of this action and each of the parties pursuant to Section 12 of the Clayton Act, 15 U.S.C. § 22, and 28 U.S.C. §§ 1331 and 1337.

5. Motorola **transacts business** and is found in the District of Columbia **within the meaning** of Section **12** of the Clayton Act, **15** U.S.C. § 22.

6. **Nextel transacts business** and is found in the District of **Columbia** within the meaning of Section 12 of the **Clayton** Act, 15 U.S.C. § 22.

7. **Venue** is properly based in the District of Columbia under 15 U.S.C. § 32 and 28 U.S.C. § 1391(b) and (c).

II.

DEFENDANTS

8. **Motorola is a corporation** organized and existing under the laws of **the state of Delaware**, with its **principal office** in **Schaumburg**, Illinois.

9. **Nextel** is a corporation organized and existing under the laws of the state of Delaware, with its principal office in Rutherford, New Jersey.

10. The activities of the defendants are within the flow of, and substantially **affect**, interstate commerce.

XII.

TRADE AND COMMERCE

11. “SMR service” means land mobile communications **services** provided on a **commercial** basis pursuant to **Part** 90, Subpart S of the Rules of the Federal Communications Commission (“FCC”), 47 C.F.R. §§ 90.601 - 90.659.

12. Commonly referred to as “dispatch” **service**, **SMR** service is used for quick, **reliable** and **private** communications by operators of vehicle fleets, such as **contractors**, **service** companies and delivery services, to communicate with and **within** those fleets either on a **one-to-one** or one-to-many **basis**. Dispatch **communications**, unlike telephone conversations, **are typically frequent** in **number** and short in **duration**. For example, a dispatch communication could be **used to determine** a vehicle’s location or **to** assign a service call. SMR service is **also** used

because customers find it unnecessary or undesirable to provide every truck in the fleet with cellular telephones, at least in part because cellular service is much more expensive.

13. **"Trunked" SMR** service allows customers to share radio frequencies, increasing the likelihood that any particular user will be able to gain access to a channel when that user needs to transmit a message. The specific channel used for a particular transmission is assigned automatically by computer when the customer pushes the button to talk. Once the SMR system has assigned a specific channel, the customer has exclusive and private use of that channel for the duration of the communication. In contrast, a conventional, or **untrunked**, dispatch system is akin to a multi-party telephone line. Conversations can be overheard by other persons and the use of the line is assigned by customers themselves on a first-come, first-served basis. A customer of a conventional dispatch system cannot always gain quick access to the system.

14. SMR systems have historically used high-elevation base stations to receive signals from transmitting radios, to allocate signals among available channels and to transmit the enhanced signal to the mobile units. In this deployment, SMR systems can cover a broad geographic area, allowing customers to communicate easily with their entire group over much, if not all, of a metropolitan area with only a single transmission from the high-elevation base station. In contrast, cellular telephone companies "reuse" spectrum by dividing a geographic area into groups of "cells" and using a frequency once per cell grouping

but many times within the single system; each cell covers only a portion of a metropolitan area, and a single cellular call can be passed from one cell to another as the mobile unit moves across the metropolitan area. Cellular design is not as well suited to provide SMR service, since several cells would have to transmit the communication in order to reach the entire group. Currently, the FCC prohibits cellular companies from providing one-to-many dispatch service.

15. There is a limited amount of spectrum available for SMR service.

The FCC has allocated specific radio frequencies for SMR service. Those frequencies are located in the 800 MHz and 900 MHz radio bands. Within each frequency band there is a specified number of channels assigned to SMR service. Channels are assigned in pairs to permit two-way communication. From the late 1970's through 1988, the FCC allocated 280 channel pairs of 800 MHz bandwidth for SMR services. Those channels quickly reached their capacity of 100 to 150 customers per channel in most large cities. In 1986, the FCC allocated an additional 200 channel pairs in the 900 MHz bandwidth in the 50 largest metropolitan areas for SMR service. Even though the mobile radios used on 800 MHz and 900 MHz systems are not compatible with each other, 800 MHz and 900 MHz systems provide functionally similar service.

16. More recently, the FCC allocated 100 channel pairs in the 220 MHz bandwidth for local or regional trunked radio systems, including SMR systems. When implemented, SMR service in the 220 MHz band will be functionally similar to SMR services in the 800 MHz and 900 MHz bands. At present, however, the

only constructed 220 MHz SMR systems **are** in California. The scope of expected **implementation varies** by city. Further, 220 **MHz service will** require **some** time to **gain** commercial acceptance and to **affect** competition for 800 MHz and 900 **MHz service**, as 800 MHz and 900 MHz services **required** when they were **first** implemented.

17. **Trunked** SMR service on 800 MHz, 900 MHz and 220 **MHz** is a **relevant** product market. Conventional dispatch service is not a **substitute** because it **affords** lesser privacy and lower reliability. Mobile telephone **service** is **not** a substitute because it is significantly more expensive than **SMR service**, is **significantly** more **difficult** for customers to restrict communications to the **defined** fleet or group, and because it cannot be provided on a **one-to-many** dispatch basis.

18. The relevant geographic markets are the **service** areas in which the FCC has issued licenses for **the** provision of SMR service. There are **fifteen** cities -- **including** nine of the **ten** largest metropolitan areas in **the** United **States** -- where the effects of this transaction will be anticompetitive: Atlanta, Georgia; Boston, Massachusetts; Chicago, Illinois; Dallas, Texas; Denver, Colorado; Detroit, Michigan; Houston, Texas; Los Angeles, California; Miami, Florida; New York, New York; Orlando, Florida; Philadelphia, Pennsylvania; San Francisco, California; Seattle, Washington; and Washington, D.C.

19. **The FCC's early** licensing policies of 800 **MHz spectrum** led **to an** **industry** with numerous small **SMR** service providers. **Applicants could apply** for up **to 20** (later reduced **to** five) **trunked** channel pairs per market. To retain a

trunked channel pair an **SMR** provider **had** to **build its facilities within one year** of **receiving its license** and have a **certain number** of subscribers. Systems not **meeting the standards** would have **unloaded** (unused) **channels** **reassigned to applicants on a waiting** list. Applicants for **900 MHz channels** could apply for **up to ten channel pairs** per market. **As** with **800 MHz licensees**, the **900 MHz SMR** provider **had** to meet **construction** and loading requirements. Failure to **do so** **caused the** unconstructed or unloaded channels to revert **to** the FCC for **future reallocation**.

20. **Initially, the** FCC allowed radio equipment manufacturers, like Motorola, to own no more than one 20 channel **trunked** system. That restriction **was later** removed. The FCC did, however, permit Motorola and others to manage licenses held by other persons in exchange for a percentage of the **revenues** of the operation. Motorola took advantage of **that** rule and contracted to manage **a large** number of **SMR** systems. Those agreements are typically for ten years. In addition **to** assigning the managing company responsibility for **daily operations**, many of Motorola's management agreements grant it the right to select the base **station** equipment **to** be deployed by the system and the right of **first refusal** in the event the **licensee** receives an offer **to** purchase the **system**. While the FCC **requires** that management agreements technically leave control of **the** operations **in the hands** of the licensee, **managing** companies generally have effective control of **the** channel6 they manage.

21. In recent years, Nextel and other companies have been expanding their channel holdings by acquiring competing SMR service providers in the 800 MHz band. As a result, Nextel holds a dominant share of the 800 MHz SMR spectrum available for trunked SMR services in most of the largest markets in the country. Motorola is the second-largest provider of trunked SMR services in the United States.

22. Nextel's acquisitions were undertaken as part of a plan to replace the existing SMR system⁶ with digital mobile networks. The FCC first authorized Nextel to implement digital network⁶ in 1991. Digital mobile networks will employ the technology known as the Motorola Integrated Radio System, or "MIRS," developed by Motorola that employs a frequency reuse configuration much like that used for cellular networks. Nextel expects to become a major provider of mobile telephone services, in competition with the two cellular service providers, as well as to continue being a dispatch service provider. As part of its plan to establish digital mobile networks, Nextel entered into agreements to purchase two other companies that planned to establish regional digital mobile networks. On July 13, 1994, Nextel entered into an Agreement and Plan of Merger with OneComm Corporation, which accumulated 800 MHz spectrum in sixteen Western States. On August 5, 1994, Nextel entered into a similar agreement with Dial Page, Inc., which accumulated 800 MHz spectrum in twelve Southeastern states.

23. In addition to its 800 MHz owned and managed channels, Nextel owns and manages 900 MHz channels in a number of major cities. The 900 MHz channels may be used to provide SMR services, but current technology does not permit their utilization in conjunction with the planned MIRS digital mobile networks.

24. On August 4, 1994, Nextel and Motorola entered into an agreement by which Nextel will acquire Motorola's 800 MHz SMR systems and the right to manage Motorola's 900 MHz systems. Motorola will receive twenty-four percent (24%) of Nextel's voting securities and will sell Nextel MIRS equipment for its digital mobile networks.

25. In each of the fifteen markets, this agreement will substantially reduce competition in the market for trunked SMR service, as described below in paragraphs 26-40. In each of these markets the proposed acquisition will substantially increase concentration in already concentrated markets. Using a measure of market concentration called the "HHI" (defined and explained in Appendix A), the HHI is currently greater than 2200 in each of them, and the transaction will increase the HHI by more than 1400 points and leave Nextel with the ability to increase the prices of or decrease the quality or quantity of trunked SMR services.

26. In Atlanta, Georgia, Nextel will own or manage, upon closing of its agreement with Dial Page, approximately 250 600 MHz channels. Motorola is the largest remaining provider of SMR services in Atlanta; it owns or manages

approximately 50 800 MHz channels and 90 900 MHz channels there. Other providers of trunked SMR services currently hold, in total, licenses for approximately 105 800 MHz and 900 MHz channels on which they can provide trunked SMR service.

27. In Boston, Massachusetts, Nextel currently owns or manages approximately 200 800 MHz channels and 60 900 MHz channels. Motorola is the largest remaining provider of SMR services in Boston; it owns or manages approximately 30 800 MHz channels and 60 900 MHz channels there. Other providers of trunked SMR services currently hold, in total, licenses for approximately 200 800 MHz and 900 MHz channels on which they can provide trunked SMR service.

28. In Chicago, Illinois, Nextel currently owns or manages approximately 112 800 MHz channels and 50 900 MHz channels. Motorola is the largest remaining provider of SMR services in Chicago; it owns or manages approximately 77 800 MHz channels and 80 900 MHz channels there. Other providers of trunked SMR services currently hold, in total, licenses for approximately 115 800 MHz and 900 MHz channels on which they can provide trunked SMR service.

29. In Dallas, Texas, Nextel currently owns or manages approximately 190 800 MHz channels and 50 900 MHz channels. Motorola is the largest remaining provider of SMR services in Dallas; it owns or manages approximately 75 800 MHz channels and 70 900 MHz channels there. Other providers of

trunked SMR services currently hold, in total, licenses for approximately 62 800 **MHz** and 900 **MHz** channels on **which they** can provide **trunked** SMR service.

30. In Denver, Colorado, **Nextel**, upon closing of its agreement **with OneComm**, **will** own or manage **approximately 160 800 MHz** channels. **Motorola** is the **largest** remaining provider of **SMR services** in Denver, it **owns** or **manages**

● pporimately 90 800 MHz channels there. Other providers of **trunked SMR services currently** bold, in **total**, licenses for approximately 165 800 MHz and B00 **MHz** channels on which they can provide **trunked** SMR service.

31. In Detroit, Michigan, **Nextel** currently **owns** or manages **approximately 93 800 MHz** channels. Motorola is the largest remaining provider of SMR services in Detroit; it **owns** or manages approximately 67 800 MHz channels and 30 900 MHz channels there. The several other providers of **trunked SMR services currently** hold, in total, licenses for approximately 50 800 MHz and B00 **MHz** channels on which they can provide **trunked** SMR service.

32. In Houston, Texas, Next.4 **currently owns** or manages approximately 146 800 MHz channel s and 40 900 MHz channels. Motorola is the largest remaining provider of SMR **services** in Houston; it **owns** or manages

● pprodmatly 125 800 **MHz** channels and 100 900 **MHz** channels there. Other providers of **trunked SMR services** currently bold, in total, **licenses** for approximately 110 800 **MHz** and B00 **MHz** channels on **which they can** provide **trunked** SMR **service**.